

submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of section 4.11.

- (c) *IXC or LEC tandem facilities.* In the case of IXC or LEC tandem facilities, providers must, if technically possible, use real-time blocked calls to determine whether criteria for reporting an outage have been reached. Providers must report IXC and LEC tandem outages of at least 30 minutes duration in which at least 90,000 calls are blocked or at least 1,350 DS3-minutes are lost. For interoffice facilities which handle traffic in both directions and for which blocked call information is available in one direction only, the total number of blocked calls shall be estimated as twice the number of blocked calls determined for the available direction. Providers may use historic carried call load data for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage, to estimate blocked calls whenever it is not possible to obtain real-time blocked call counts. When using historic data, providers must report incidents where at least 30,000 calls would have been carried during a time interval with the same duration of the outage. (DS3 minutes are defined in paragraph (d) of section 4.7.) In situations where, for whatever reason, real-time and historic carried call load data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried call load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week, the same time of day, and the same duration as the outage. If this cannot be done, for whatever reason, the outage must be reported. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request.

(d) *Satellite.*

(1) All satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any of the following key system elements: one or more satellite transponders, satellite beams, inter-satellite links, or entire satellites. In addition, all Mobile-Satellite Service ("MSS") satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any gateway earth station, except in the case where other earth stations at the gateway location are used to continue gateway operations within 30 minutes of the onset of the failure.

(2) All satellite communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that manifests itself as:

- (i) a loss of complete accessibility to at least one satellite or transponder;
- (ii) a loss of a satellite communications link that potentially affects at least 900,000 user-minutes (as defined in section 4.7(d)) of either telephony service or paging service;
- (iii) potentially affecting any special offices and facilities (in accordance with paragraphs (a) - (d) of section 4.5) other than airports; or
- (iv) potentially affecting a 911 special facility (as defined in (e) of section 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility.

(3) Not later than 72 hours after discovering the outage, the operator and/or provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty

days after discovering the outage, the operator and/or provider shall submit electronically a Final Communications Outage Report to the Commission.

(4) The Notification and the Initial and Final reports shall comply with all of the requirements of section 4.11.

(5) Excluded from these outage-reporting requirements are those satellites, satellite beams, inter-satellite links, MSS gateway earth stations, satellite networks, and transponders that are used exclusively for intra-corporate or intra-organizational private telecommunications networks, for the one-way distribution of video or audio programming, or for other non-covered services (that is, when they are never used to carry common carrier voice or paging communications).

(e) *Signaling System 7*. Signaling System 7 (SS7) providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize an outage of at least 30 minutes duration that is manifested as the generation of at least 90,000 blocked calls based on real-time traffic data or at least 30,000 lost calls based on historic carried loads. In cases where a third-party SS7 provider cannot directly estimate the number of blocked calls, the third-party SS7 provider shall use 500,000 real-time lost MTP messages as a surrogate for 90,000 real-time blocked calls, or 167,000 lost MTP messages on a historical basis as a surrogate for 30,000 lost calls based on historic carried loads. Historic carried load data or the number of lost MTP messages on a historical basis shall be for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage. In situations where, for whatever reason, real-time and historic data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week and the same time of day as the outage. If this cannot be done, for whatever reason, the outage must be reported. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request. Finally, whenever a pair of STPs serving any communications provider becomes isolated from a pair of interconnected STPs that serve any other communications provider, for at least 30 minutes duration, each of these communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering such outage. Not later than 72 hours after discovering the outage, the provider(s) shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider(s) shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of section 4.11.

(f) *Wireline*. All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices and facilities (in accordance with paragraphs (a) - (d) of section 4.5); or (4) potentially affects a 911 special facility (as defined in (e) of section 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of section 4.7.) Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the

Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of section 4.11.

**§ 4.11 Notification and Initial and Final Communications Outage Reports that must be filed by communications providers.** Notification and Initial and Final Communications Outage Reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Notification shall provide: the name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; the particular services affected; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting entity. The Initial and Final Reports shall contain the information required in Part 4 of the Commission's rules. The Initial report shall contain all pertinent information then available on the outage and shall be submitted in good faith. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report. The Notification and the Initial and Final Communications Outage Reports are to be submitted electronically to the Commission. "Submitted electronically" refers to submission of the information using Commission-approved Web-based outage report templates. If there are technical impediments to using the Web-based system during the Notification stage, then a written Notification to the Commission by email, FAX, or courier may be used; such Notification shall contain the information required above. All notifications, as well as all Initial and Final Communications Outage Reports, whether in tangible or electronic form, shall be addressed to the Chief, Office of Engineering & Technology, Federal Communications Commission, Washington, D.C. 20554. Electronic filing shall be effectuated in accordance with procedures that are specified by the Commission by public notice.

**§ 4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.** Reports by the National Communications System (NCS) and by special offices and facilities (other than 911 special offices and facilities) of outages potentially affecting them (see paragraphs (a) – (d) of section 4.5) shall be made according to the following procedures:

- (a) When there is a mission-affecting outage, the affected facility will report the outage to the NCS and call the communications provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the Commission. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility and in the exercise of its judgment, will either:
  - (1) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;
  - (2) Forward a report of the outage to the Commission, designating the outage as one affecting "special facilities," but reporting it at a level of detail that precludes identification of the particular facility involved; or
  - (3) Hold the report at the NCS due to the critical nature of the application.

- (b) If there is to be a report to the Commission, an electronic, written, or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served at such other facility designated by the Commission by public notice or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. If the report is oral, it is to be followed by an electronic or written report not later than the next business day. Those providers whose service failures are in any way responsible for the outage must consult and cooperate in good faith with NCS upon its request for information.
- (c) Additionally, if there is to be a report to the Commission, the communications provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The communications provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (b) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (a) (1) or (a) (2) of this section to the Commission.

**PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

The authority citation for Part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201-205, 214, 218, 403, and 571, unless otherwise noted.

1. Section 63.100 is amended by removing paragraphs (a) through (h) and revising § 63.100 to read as follows:

**§ 63.100 Notification of service outage.**

The requirements for communications providers concerning communications disruptions and the filing of outage reports are set forth in Part 4 of this chapter.

**APPENDIX C****ILLUSTRATIVE ELECTRONIC FILING TEMPLATE**

An illustrative template for reporting telecommunications disruption ("outage") information is given below. It is expected that additions, modifications, and deletions to this proposed template will be made as appropriate to better achieve the purposes that are contained in Sections 1 and 256 of the Communications Act of 1934, as amended, and as discussed in the Report and Order In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications (FCC ET Docket No. 04-35).

Serial Number for Report:  Initial Report: ☐ Final Report ☐  
Name of Reporting Entity (e.g., Company):   
Type of Entity Reporting Disruption:   
Date of Incident:   
Local Time Incident Began (24 hr clock):  Time Zone   
Outage Duration:  Hrs  Min

Explanation of Outage Duration (for incidents with partial restoration times)

Inside Building Yes ☐ No ☐

#### Effects of the Outage

##### Services Affected

Cable Telephony: ☐

Wireless (other than paging): ☐

E911: ☐

Paging: ☐

Satellite: ☐

Signaling (SS7): ☐

Wireline: ☐

Special Facilities (Airport, Government, etc.): ☐

Other (please specify)

##### Number of Potentially Affected:

Wireline Users:

Wireless (non-paging) Users:

Paging Users:

Cable Telephony Users:

Satellite Users:

**Number of Affected:****Blocked Calls:****Real-Time** ☐**Historic** ☐**DS3s:****Lost SS7 MTP Messages:****Real-Time** ☐**Historic** ☐**Mobile Switching Center (MSC) Failed****Yes** ☐**No** ☐**Geographic Area Affected****State:**MULTI STATES ☐**County:****More Complete Description of Geographic Area of Outage****Description of Incident****Description of the Cause(s) of the Outage**

**Direct Causes:** The direct cause is the immediate event that resulted in an outage. Please scroll down to the appropriate entry.

**Root Cause(s):** The root cause is the underlying reason why the outage occurred. Please scroll down to the appropriate entry.



**Contributing Factors. Please scroll down to the appropriate entry.**☐ No Other Cause**Contributing Factors. Please scroll down to the appropriate entry.**☐ No Other Cause**Lack of Diversity Contributed to, or Caused, Outage:**☐ Yes**Malicious Activity:**☐ Yes**If yes, please explain****Name and Type of Equipment that Failed:****Specific Part of the Network Involved:****Method(s) Used to Restore Service****Was Telecommunications Service Priority (TSP) Involved in the Restoration of Service?**☐ Yes**Steps Taken to Prevent Reoccurrence**

**Applicable Best Practices That Might Have Prevented the Outage or Reduced Its Effects (See [www.nric.org](http://www.nric.org) )**

[REDACTED]

### **Best Practices Used to Mitigate Effects of Outage**

\_\_\_\_\_

## Analysis of Best Practices

[REDACTED]

**Primary Contact Person:**

\_\_\_\_\_

**Phone Number:**

100

**E-mail Address:**

10/10/2010

**U.S. Postal Service Address**

11/11/2016

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\_\_\_\_\_

**Secondary Contact Person:**

**Phone Number:**

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### E-Mail Address

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**U.S. Postal Service Address**

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## APPENDIX D

## FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. The purpose of the *Report and Order* is to extend the Commission's requirements for reporting communications disruptions to communications providers that are not wireline carriers.<sup>4</sup> Previously, such requirements have applied to wireline and cable telecommunications common carriers only.<sup>5</sup> Now they will additionally apply to all communications providers that offer circuit-switched telephony, satellite communications providers, Signaling System 7 providers, terrestrial wireless communications providers, and affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications. We have taken this action because we recognize the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well-being of our Nation, especially in view of the increasing importance of non-wireline communications in the Nation's communications networks and critical infrastructure. We also are moving the outage-reporting requirements from Part 63 of our rules to Part 4 as a way to take cognizance that, although these requirements were originally established within the telecommunications common carrier context, it is now appropriate to adapt and apply them more broadly across all communications platforms to the extent discussed in the *Notice*. Further, in an effort to promote rapid reporting and minimal administrative burden on covered entities, we are streamlining compliance with the reporting requirements through electronic filing with a "fill in the blank" template and by simplifying the application of that rule. In addition, we are adopting a common metric that would establish a general outage-reporting threshold for all covered communications providers. These actions are designed to allow the Commission to obtain the necessary information regarding services disruptions in an efficient and expeditious manner and achieve significant concomitant public interest benefits.

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> In the *Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, FCC 04-30, 19 FCC Rcd 3373 (2004) ("Notice"), at ¶ 56 and Appendix C.

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> By the term "communications provider" we mean an entity that provides two-way voice and/or data communications, and/or paging service, by radio, wire, cable, satellite, and/or lightguide for a fee to one or more unaffiliated entities.

<sup>5</sup> See Section 63.100 of the Commission's rules currently requires only wireline and cable telecommunications common carriers to report significant service disruptions. Section 63.100 of the Commission's rules, which is codified at 47 C.F.R. § 63.100, was first adopted in 1992. *Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, *Report and Order*, 7 FCC Rcd 2010 (1992); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 8517 (1993); *Second Report and Order*, 9 FCC Rcd 3911 (1994); *Order on Reconsideration of Second Report and Order*, 10 FCC Rcd 11764 (1995).

3. The general outage-reporting threshold criteria that we adopting specify that those outages of at least 30 minutes duration that potentially affect 900,000 user-minutes must be reported. This metric is the mathematical result of multiplying the number of end users potentially affected by the outage and the outage's duration expressed in minutes. For example, a 30-minute outage that potentially affects 30,000 users meets the 900,000 user-minute threshold for reporting (*i.e.*, 30,000 users X 30 minutes = 900,000 user-minutes). Also, a 60-minute outage that potentially affects 15,000 users meets this threshold (*i.e.*, 15,000 users X 60 minutes = 900,000 user-minutes). We also are adopting specific outage-reporting thresholds for 911/E911 services and for other special offices and facilities. Major airports have always been included as special offices and facilities, and we are expanding this definition to include all of those airports that are primary (PR), commercial service (CM), or reliever (RL) airports as listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). We also specified thresholds for major infrastructure failures, such as those involving the loss of DS3 facilities or Signaling System 7 messages.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

4. One comment – by the Rural ILECs<sup>6</sup> – was filed directly in response to the IRFA. The Rural ILECs state that the outage reporting rules that we proposed in the *Notice* – which called for detailed, initial communications outage reports to be filed within 120 minutes of the discovery of the outage – “could compromise the ability of a small, rural ILEC to restore service during the crucial hours immediately after the onset of an outage. Indeed, compliance with the proposed rules may be technically infeasible in situations where faxes cannot be sent and the Internet cannot be accessed.”<sup>7</sup> To minimize the impact on small, rural companies, they suggest that the Commission exempt those companies that are already subject to state outage reporting requirements. They further suggest that the Commission permit those companies that are not subject to such state requirements to report outages orally within 24 hours of the discovery of a reportable outage.<sup>8</sup>

5. Based on these comments and the more general comments of other parties in the proceeding, we are adopting modifications to our proposed rule that, we believe, will adequately address the concerns raised by the Rural ILECs. Specifically, instead of requiring the filing of a detailed, initial outage report within 120 minutes of discovery of the outage, we are requiring the filing of only a bare-bones Notification disclosing the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We will not require the more detailed initial outage report to be filed until 72 hours

<sup>6</sup> The Rural ILECs include the following 33 rural incumbent local exchange carriers that state that they have fewer than 1,500 employees and should therefore be considered to be small businesses: Big Sandy Telecom, Inc.; Bluestem Telephone Company; C-R Telephone Company; Chautauqua and Erie Telephone Corporation; China Telephone Company; Chouteau Telephone Company; Columbine Telecom Company; Community Service Telephone Company; Ellensburg Telephone Company, Inc.; Fremont TelCom; Great Plains Communications, Inc.; GTC, Inc.; Kennebec Telephone Company; K&M Telephone Company; Maine Telephone Company; Marianna and Scenery Hill Telephone Company; Northland Telephone Company of Maine, Inc.; Odin Telephone Exchange, Inc.; Peoples Mutual Telephone Company; RC Communications, Inc.; Roberts County Telephone Cooperative Association; Sidney Telephone Company; Standish Telephone Company, Inc.; STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Sunflower Telephone Co., Inc.; Taconic Telephone Corp.; The El Paso Telephone Company; The Columbia Grove Telephone Company; The Nebraska Central Telephone Company; The Orwell Telephone Company; Waitsfield-Fayston Telephone Company; Yates City Telephone Company; and YCOM Networks, Inc. See Rural ILECs Comments on the IRFA at 1 & Attachment A.

<sup>7</sup> Rural ILECs Comments on the IRFA at 1-2.

<sup>8</sup> *Id.* at 2.

after discovery of the outage. The final communications outage report will be due 30 days after discovery of the outage, as originally proposed. This action will enable communications providers to focus on their repair and restoration efforts immediately after onset of the outage. The bare-bones Notification that we require will not substantially divert them from these efforts but will alert the Commission to the possibility that a major communications might be occurring. The 72-hour time frame for filing initial outage reports is more generous than the 24-hour time frame suggested by the Rural ILECs. The Notification will be submitted electronically, but if the outage makes this impossible, other written alternatives (such as FAX or courier) will suffice. The initial and final reports will be filed electronically. We believe that electronic filing will minimize the burdens imposed on all reporting entities, including those (if any) which might be considered to be small businesses. We do not adopt the Rural ILECs suggestion that we exempt those small, rural companies that are subject to state outage-reporting requirements. We believe that there is a legitimate need for the national, uniform outage-reporting system that we adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication.

**C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>9</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>10</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>101</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>12</sup>

7. We further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this Report and Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>13</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired

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<sup>9</sup> 5 U.S.C. § 604(a)(3).

<sup>10</sup> 5 U.S.C. § 601(6).

<sup>101</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>12</sup> 15 U.S.C. § 632.

<sup>13</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

Telecommunications Carriers,<sup>14</sup> Paging,<sup>15</sup> and Cellular and Other Wireless Telecommunications.<sup>16</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>17</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>18</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>19</sup> According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.<sup>20</sup> Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.<sup>21</sup> Thus, under this size standard, the majority of firms can be considered small.

10. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>22</sup> According to Commission data,<sup>23</sup> 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

<sup>14</sup> 13 CFR § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>15</sup> 13 CFR § 121.201, NAICS code 517211.

<sup>16</sup> 13 CFR § 121.201, NAICS code 517212.

<sup>17</sup> 15 U.S.C. § 632.

<sup>18</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>19</sup> 13 CFR § 121.201 (1997), NAICS code 513310 (changed to 517110 in October 2002).

<sup>20</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

<sup>21</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>22</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

<sup>23</sup> "Trends in Telephone Service" at Table 5.3.

11. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>24</sup> According to Commission data,<sup>25</sup> 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> According to Commission data,<sup>27</sup> 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

13. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging<sup>28</sup> and Cellular and Other Wireless Telecommunications.<sup>29</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,<sup>30</sup> 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees.<sup>31</sup> Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

14. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity

<sup>24</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

<sup>25</sup> "Trends in Telephone Service" at Table 5.3.

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

<sup>27</sup> "Trends in Telephone Service" at Table 5.3.

<sup>28</sup> 13 CFR § 121.201, North American Industry Classification System (NAICS) code 517211.

<sup>29</sup> 13 CFR § 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>30</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (August 2002).

<sup>31</sup> *Id.*

that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>32</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>33</sup> These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>34</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>35</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses would have included the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers would have been small entities that could be affected by the rules and policies adopted herein. The results of Auction No. 35, however, were set aside and the licenses previously awarded to NextWave, which had qualified as a small entity, were reinstated. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

15. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>36</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15

<sup>32</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>33</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 Fed.Reg. 33859 (July 1, 1996).

<sup>34</sup> See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 59 Fed.Reg. 37566 (July 22, 1994).

<sup>35</sup> FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).

<sup>36</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).



million. The SBA has approved these small business size standards.<sup>37</sup> In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

16. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.<sup>38</sup> These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

17. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.<sup>39</sup> According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.<sup>40</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.<sup>41</sup> Thus, under this size standard, the majority of firms can be considered small.

18. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>42</sup> A significant subset of the Rural

<sup>37</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>38</sup> 47 CFR § 90.814(b)(1).

<sup>39</sup> 13 C.F.R. § 121.201, NAICS code 517211 (changed from 513321 in October 2002).

<sup>40</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513321 (issued October 2000).

<sup>41</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>42</sup> The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>43</sup> The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.<sup>44</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

19. *Cable and Other Program Distribution.*<sup>45</sup> This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>46</sup> Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

20. *Cable System Operators (Rate Regulation Standard).* The Commission has developed a size standard for small cable system operators for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.<sup>47</sup> Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.<sup>48</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers.<sup>49</sup> The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

21. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>50</sup> The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small

<sup>43</sup> BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>44</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>45</sup> 13 CFR § 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

<sup>46</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

<sup>47</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92-266 and 93-215, 10 FCC Rcd 7393 (1995), 60 Fed. Reg. 10534 (February 27, 1995).

<sup>48</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>49</sup> 47 C.F.R. § 76.901(c).

<sup>50</sup> 47 U.S.C. § 543(m)(2).

operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>51</sup> Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450.<sup>52</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators as defined in the Communications Act of 1934.

22. *Satellite Telecommunications Providers.* The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 or less in average annual receipts.<sup>53</sup> For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>54</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

23. *Signaling System 7 (SS7) Providers.* The Commission has not developed a definition of small entities applicable to Signaling System 7 providers. We shall apply the SBA's small business size standard for Other Telecommunications, which identifies as small all such companies having \$12.5 million or less in annual receipts.<sup>55</sup> We believe that there are no more than half-a-dozen SS7 providers and doubt that any of them have annual receipts less than \$12.5 million. In the IRFA in this proceeding, we assumed that there may be several SS7 providers that are small businesses which could be affected by the proposed rules and requested comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules. No comments provided this information. We conclude that none of these providers are small businesses.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

24. The rules adopted in this *Report and Order* require telecommunications providers to report those outages that meet specified threshold criteria. These criteria are largely determined by the number of end users potentially affected by the outage and the duration of the outage, which generally must be at least 30 minutes. Under the prior rules, which have applied only to wireline carriers and cable television service providers that also provide telecommunications service, only about 200 outage reports per year from all reporting sources combined were filed with the Commission. In the IRFA, we stated that the proposed revisions to the threshold criteria were not expected to alter the number of outage reports filed annually to a significant degree. Nevertheless, the adopted rules do extend the outage reporting requirements to telecommunications providers that are not currently subject to these rules. Thus, in the IRFA we anticipated that more than 200 outage reports will be filed annually, but estimated that the total number of reports from all reporting sources combined will be substantially less than 1,000 annually. We noted then, and find now, that, occasionally, the outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, the IRFA concluded that we could not accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the

<sup>51</sup> 47 C.F.R. § 76.1403(b).

<sup>52</sup> *Cable TV Investor*, *supra* note 48.

<sup>53</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in Oct. 2002).

<sup>54</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued Oct. 2000).

<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517910.

reporting requirements that were proposed, the IRFA expected that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations -- and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the proposed reporting criteria. As a consequence, the IRFA tentatively found that in the usual case, the only burden associated with the proposed reporting requirements would be the time required to complete the initial and final reports. The IRFA anticipated that electronic filing using a "fill in the blank" template would minimize the amount of time and effort that would be required to comply with the proposed rules. The IRFA sought comment on the types of burdens telecommunications providers would face in complying with the proposed requirements. Entities, especially small entities, were encouraged to quantify the costs and benefits of the proposed reporting requirements. In addition, in our initial analysis pursuant to the Paperwork Reduction Act of 1995, we estimated that the Number of Respondents would be 52, the Estimated Time per Response would be 5 hours, the Frequency of Response would be "on occasion," the Total Annual Burden would be 1,040 hours, and the Total Annual Costs would be \$41,600. We sought comment on the PRA, including on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. See *Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Proposed Rule*, FCC 04-30, 69 Fed. Reg. 15761 (published March 26, 2004).

25. The Rural ILECs<sup>56</sup> were the only parties to file direct comments on the IRFA. In these comments, they state that our original proposal, which would have required small communications providers to file detailed, initial outage reports within 120 minutes of their discovery that an outage was occurring, would be overly burdensome. They explain that their employees who diagnose outages and then work to repair and restore their communications networks are the same employees who would be called upon to supply the information needed for the initial outage reports and/or to file those reports with the Commission. Therefore, the Rural ILECs conclude that our proposal could compromise their ability to restore service during the critical hours immediately after the onset of an outage. In addition, they state that compliance with the proposed rules may be technically infeasible in situations where faxes cannot be sent and the Internet cannot be accessed. To address these concerns, the Rural ILECs suggest that the Commission exempt those companies that are already subject to state outage reporting requirements. They also suggest that the Commission allow those companies that are not subject to state reporting requirements to report outages orally to the Commission within 24 hours of their discovery of a reportable outage. Taking these comments, as well as the general comments of other parties into account, the Commission, in the *Report and Order*, adopted a modified outage-reporting rule that is more flexible than the one proposed in the *Notice*. Within 120 minutes of discovering an outage, each reporting entity, whether large or small, will be required to submit to the Commission a Notification that contains only a minimal amount of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We anticipate that reporting entities will ordinarily not need more than 15 minutes to file a Notification with the Commission. The more detailed initial report, with which Rural ILECs expressed concern, will not be required to be filed until 72 hours after the outage was discovered. Further, all filings are to be made electronically, thereby minimizing the burden on all reporting entities. But, if a specific outage situation prevents the Notification from being filed electronically or by FAX, other written means of filing (such as the use of a courier) will be acceptable.

<sup>56</sup>

See *supra* note 6.

Thus, we find that our action will enable communications providers to focus on their repair and restoration efforts immediately after onset of the outage. The bare-bones Notification that we require will not substantially divert them from these efforts but will alert the Commission to the possibility that a major communications might be occurring. In addition, the alternative, 72-hour time frame for filing initial outage reports is more generous than the 24-hour time frame suggested by the Rural ILECs. Thus, we do not find that the public interest would be served by the Rural ILECs suggestion to permit outage information to be reported orally within 24 hours. The quality of information that would be submitted orally is likely to be less accurate and less uniform than that submitted electronically through the "fill in the blank" template which we have adopted. Also, the reporting burden would likely not decrease as a result of oral submissions, because of the speed that e-filing permits and because of the greater likelihood that the Commission would need to ask oral submitters to correct and supplement incorrect and incomplete orally-submitted information.

26. We also do not adopt the Rural ILECs suggestion that we exempt those small, rural companies that are subject to state outage-reporting requirements. We believe that there is a legitimate need for the national, uniform outage-reporting system that we adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication. The information collection that we have adopted is necessary to fulfill the Commission's responsibilities for ensuring the reliability and security of the Nation's telecommunications networks and infrastructure, which also serves the public's homeland security needs. We do not find that further accommodations for small businesses could be made that would not be outweighed by the public interest benefits of our present action.

27. We estimate that reporting entities will ordinarily not need more than 15 minutes to file electronically with the Commission the bare-bones Notification that will contain only a minimal amount of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We further estimate that reporting entities will ordinarily not need more than 45 minutes to complete and submit electronically to the Commission the initial report, due within 72 hours of discovery of the outage, that will contain all information then available. Finally, we estimate that reporting entities will ordinarily not need more than 2 hours to complete and submit electronically the final report to the Commission. These time estimates include the actual time needed for data entry and submission but do not include the time taken for data gathering and analysis. Also excluded is idle time (for example, any time in which partially completed information is waiting in an in-box for further review), which we find cannot fairly be counted as a reporting burden. Since most companies routinely collect information on service failures, it is difficult to estimate precisely how much additional time for data gathering and analysis, if any, will be required to comply with the revised rule. In any event, we estimate that for the great majority of outages the total additional time so required will be significantly less than two (2) hours. Thus, the final report will generally not require more than 4 hours in total time. In making all of our time estimates, above, we have taken into account that all filings are to be made electronically, through a "fill in the blank" template, thereby minimizing the burden on all reporting entities. In sum, we estimate the total time needed to file all reports pertinent to each outage that meets or exceeds the threshold criteria to be significantly less than 5 hours (the Notification + the Initial Report + Final Report: 15 minutes + 45 minutes + 2 to 4 hours < 5 hours).

28. Although we anticipate that more than the current amount of 200 outage reports will be filed annually, we estimate that the total number of reports, from all reporting sources combined, will be

substantially less than 1,000 annually. We note that, occasionally, the outage reporting requirements could require the use of professional skills, including legal and engineering expertise. The commenting parties have not provided any data that would assist us in estimating more accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements, we expect that all telecommunications providers (including small ones) will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations--and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the reporting criteria that we propose here. As a consequence, we believe that in the usual case, the only burden associated with the reporting requirements will be the time required to complete the Notification, and the Initial and Final Reports. We anticipate that electronic filing, through the type of illustrative template that we have set forth in Appendix C of this *Report and Order*, should minimize the amount of time and effort that will be required to comply with the rules. In addition, we anticipate that the vast majority of outage reports will be necessitated by outages that meet the general reporting threshold criteria of having a duration of at least 30 minutes and potentially affecting at least 900,000 user-minutes (that is, the mathematical result of multiplying the outage duration expressed in minutes and the number of users potentially affected by the outage meets or exceeds 900,000). We further anticipate that the vast majority of these types of outages will be experienced by large telecommunications providers. Only rarely will providers that are small businesses experience such outages because they are most likely to have a relatively small number of end users that potentially would be affected by any particular outage. Therefore, the outages that are experienced by those providers that are small businesses will most likely fall below the criteria for mandatory reporting and, thus, will not be required to be reported to the Commission. Therefore, such outages will impose minimal reporting burdens on small businesses. Small businesses as a group may experience a few outages yearly that must be reported because those outages meet the reporting criteria for outages potentially affecting 911/E911 services or other special offices and facilities. Large businesses face the same reporting criteria and burden. Because of the critical nature of 911/E911 and other special offices and facilities, it is a national priority that all telecommunications providers, including those that are small businesses, comply with these particular requirements.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

29. In order to minimize any adverse impact of the modified outage-reporting rule on small entities, we have provided for the electronic filing of reports through use of a "fill in the blank" template and have adopted a three-step reporting process that is less burdensome than the two-step process originally proposed. We had proposed to require that, 120 minutes after discovering an outage, reporting entities file an Initial Report that would include all information about the outage then available. Instead, we have considered comments that indicate that this proposal could interfere with the ability of reporting entities, especially small businesses, to focus on repair and restorative efforts. Therefore, we have adopted a more flexible requirement, by which reporting entities, 120 minutes after discovering an outage, will file electronically a bare-bones Notification that will contain only a minimal amount of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. The time frame for filing electronically the Initial Report, which is to contain all information then available, has been revised to be 72 hours after the outage's discovery. This is less burdensome to reporting entities because all or most of the diagnostic and restorative work will have typically been completed by this time, and, thus, the reporting requirement will not significantly interfere with such efforts. Moreover, because all or most of the information will already be known, it is unlikely that very much time will be needed to complete either the Initial or the Final Report. The Final Report, as we had

proposed, will be due 30 days after discovery of the outage; no commenting party has objected to this time frame.

30. In taking this action, we have considered but reject the Rural ILECs suggestion that, instead of requiring the filing of the Initial Report by the 120-minute mark, we allow small entities to submit outage information orally at the 24-hour mark. The requirements that we adopt will allow all entities 72 hours to file the Initial Report electronically. At the 120-minute mark, we are requiring only that a bare-bones Notification be submitted. We also reject Rural ILECs suggestion that we exempt those small entities to which State outage-reporting requirements apply. We believe that there is a legitimate need for the national, uniform outage-reporting system that we have adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication. In any event, we believe that the requirements that we adopt will adequately address the concerns of small entities as well as provide more timely warning of outages and, ultimately, more accurate, complete, and uniform information that will of great use to the Commission, the Department of Homeland Security, and technical expert groups in assessing and improving network reliability and in addressing homeland security concerns.

31. Our action also takes into account comments filed by the BloostonLaw Paging Group, which states our proposed metric of 900,000 user-minutes would place onerous burdens on the paging industry and that almost all paging outages involve only a particular transmitter or a small cluster of transmitters and the provider's entire system. As a result, we adopted rules that are a modified version of our original proposal, which would have required the reporting of all paging outages, even ones that involve only a single transmitter, that meet the threshold. Instead, we have decided to apply the 900,000 user-minute criterion to outages of the switch only. Therefore, we anticipate that very few paging outages will be reportable. The BloostonLaw Paging Group also state the proposed 120-minute time frame for filing Initial Reports would cause providers to divert resources from restoration efforts and/or to hire additional personnel. We addressed these concerns, above, where we referenced the comments of the Rural ILECs, and have adopted a more flexible, three-step process that adequately addresses and mitigates these concerns and, we find, would not impose a significant financial burden on paging providers. Thus, we reject the suggestions of BloostonLaw Paging Group that we limit the contemporaneous outage-reporting requirements for paging providers to those outages whose origins appear "suspicious" and require reports for "non-suspicious" outages to be filed semi-annually or less frequently. We do not find that it is always immediately evident whether or not an outage has a "suspicious" origin.

32. Finally, we reject the suggestions of BloostonLaw Rural Carriers that, in order to reduce reporting burdens, outage reporting by small (*i.e.*, Tier III) wireless carriers should be on a voluntary basis or an annual or semi-annual basis, with contemporaneous reporting required only for outages of "suspicious" origin. As discussed in the paragraphs above, we believe that the modifications we have adopted are sufficient to address and mitigate the concerns of small entities while ensuring that the Commission, DHS, and technical expert groups receive the essential information. We also disagree, for reasons explained in the text of the *Report and Order*, with their argument that the concentration ratio of 8 that we have adopted would, for rural wireless providers, result in an overstatement of the number of users potentially affected by an outage.<sup>57</sup>

<sup>57</sup>

See *Report and Order*, *supra*, at ¶¶ 107-113.

33. **Report to Congress:** The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>58</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>59</sup>

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<sup>58</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>59</sup> See 5 U.S.C. § 604(b).



## APPENDIX E

## Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Act Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rule Making* ("Further Notice"). Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the *Further Notice* provided above in paragraph 174. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the *Further Notice* including the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

*A. Need for and Objectives of the Proposed Rules.* We seek to expand the record in this proceeding in order to focus specifically on the unique communications needs of airports. In this regard, we request comment on the additional types of airport communications (e.g., wireless, satellite) that should be subject to service disruption reports. This may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should be. Potentially, all of the airports in the United States may need to be used by aircraft for emergency landings. The potential loss life or property through commercial aircraft crashes can be catastrophic. The need, however, for communications among non-commercial (as well as commercial) airports and the rest of the United States becomes more apparent in the contexts of general aviation and government aviation in which many non-commercial planes carry, for example, personnel who are essential to national defense and homeland security, as well as government officials from Federal, state, local, and foreign governments. Moreover, all of the airports in the United States are potential launching pads for terrorist activities. As a consequence, it is essential that all personnel at airports throughout the United States be able to access appropriate government and civilian personnel to avert acts of terrorism. Finally, commercial communications links are used by airports to support navigation, traffic control, maintenance, and restoration. Those commercial communications links need to be functioning continuously. The requirements for which we seek comment would be in addition to those adopted in the *Report and Order* in this proceeding. Those requirements apply to wireline and cable circuit-switched telecommunications with airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). Outages affecting any of these airports for 30 minutes or more must be reported.

*B. Legal Basis.* The legal basis for the rule changes proposed in this *Further Notice* are contained in sections 1, 4(i), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d), and in section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. § 1704.

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 - 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

C. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Notice May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

The small entity licensees and regulatees that may be affected by rules adopted pursuant to this *Further Notice* are the same as those addressed in the Final Regulatory Flexibility Act analysis for the *Report and Order* in this proceeding. See *supra* Appendix D. Specifically, all of the following categories of licensees and regulatees may be affected: Wired Telecommunications Carriers; Incumbent Local Exchange Carriers (LECs); Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers;" Interexchange Carriers (IXCs); Wireless Service Providers; Broadband Personal Communications Service; Narrowband Personal Communications Services; 800 MHz and 900 MHz Specialized Mobile Radio Licenses; Paging; Rural Radiotelephone Service; Cable and Other Program Distribution; Cable System Operators (Rate Regulation Standard); Cable System Operators (Telecom Act Standard); Satellite Telecommunications Providers; and Signaling System 7 (SS7) Providers.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The *Further Notice* seeks to expand the record in this proceeding in order to focus specifically on the unique communications needs of airports. In this regard, we request comment on the additional types of airport communications (e.g., wireless, satellite) that should be subject to service disruption reports. This may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should be. The current rule as modified by the *Report and Order* applies exclusively to wireline and cable circuit-switched telecommunications with airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). Outages affecting any of these airports for 30 minutes or more must be reported. The *Further Notice* considers expanding the requirements to include general aviation airports. Also, the *Further Notice* considers possible revisions to the threshold criteria for determining whether outage reports for special offices and facilities (as specifically applied to airports) must be filed. Under previous rules, which applied only to wireline carriers and cable television service providers that also provide telecommunications service, only about 200 outage reports per year from all reporting sources combined have been filed with the Commission. We have anticipated that the rule as modified by the *Report and Order* will result in more than 200 outage reports being filed annually, but have estimated that the total number of reports from all reporting sources combined will be substantially

<sup>4</sup> 5 U.S.C. §§ 603(b) (3), 604(a) (3).

<sup>5</sup> *Id.* at § 601(6).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

<sup>7</sup> 15 U.S.C. § 632.

fewer than 1,000 annually. The great majority of these reports, however, result from outages that meet the general threshold criteria, which are much broader in scope than those applicable to special facilities and offices (including airports) and which are the subject of the *Further Notice*. Thus, we anticipate that even if the scope of the requirements pertinent to special offices and facilities were extended from the 806 larger airports included within the modified rule to include additionally the 2558 general aviation airports, and the rule were extended to include wireless and satellite communications providers, the overall result would be that not more than twelve (12) additional outage reports would have to be filed annually by all providers collectively. Also, we believe it unlikely that the threshold criteria applicable to outages affecting airports would be revised in such a way as to require the filing of additional reports; on the other hand, the criteria may be refined in a manner that would reduce the necessary filings. We note that, occasionally, the proposed outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements that we are proposing here, we expect that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations -- and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the reporting criteria that we consider here. As a consequence, we believe that in the usual case, the only burden associated with the reporting requirements contained in this *Further Notice* will be the time required to complete the notification, initial and final reports. We anticipate that electronic filing, through the type of template that we have identified in Appendix C, should minimize the amount of time and effort that will be required to comply with the rules that we propose in this proceeding. In this IFRA, we therefore seek comment on the types of burdens telecommunications providers will face in complying with the proposed requirements. Entities, especially small entities, are encouraged to quantify the costs and benefits of the proposed reporting requirements.

*F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The Regulatory Flexibility Act of 1980, as amended ("RFA"),<sup>8</sup> requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>9</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>10</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>11</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>12</sup>

Potentially, all of the airports in the United States may need to be used by aircraft for emergency landings. The potential loss of life and property through commercial aircraft crashes can be catastrophic.

<sup>8</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>9</sup> 5 U.S.C. § 605(b).

<sup>10</sup> 5 U.S.C. § 601(6).

<sup>11</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>12</sup> 15 U.S.C. § 632.

The need, however, for communications among non-commercial (as well as commercial) airports and the rest of the United States becomes more apparent in the contexts of general aviation and government aviation in which many non-commercial planes carry, for example, personnel who are essential to national defense and homeland security, as well as government officials from Federal, state, local, and foreign governments. Moreover, all of the airports in the United States are potential launching pads for terrorist activities. As a consequence, it is essential that all personnel at airports throughout the United States be able to access appropriate government and civilian personnel to avert acts of terrorism. Finally, commercial communications links are used by airports to support navigation, traffic control, maintenance, and restoration. Those commercial communications links need to be functioning continuously. The requirements for which we seek comment would be in addition to those adopted in the *Report and Order* in this proceeding. Those requirements apply to wireline and cable circuit-switched telecommunications with airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). Outages affecting any of these airports for 30 minutes or more must be reported. We believe that the proposed telecommunications outage reporting requirements are minimally necessary to assure that we receive adequate information to perform our statutory responsibilities with respect to the reliability of telecommunications affecting public safety and the national defense and their infrastructures. Also, we believe that the magnitude of the outages needed to trigger the reporting requirements (*e.g.*, outages of at least 30 minutes duration) is sufficiently high as to make it unlikely that small businesses would be impacted significantly by the proposed rules. Finally, we believe that the proposed requirement that outage reports be filed electronically would significantly reduce the burdens and costs currently associated with manual filing processes. We seek comment on any alternatives that might lessen the compliance burden on small entity communications providers with respect to reporting outages that affect non-commercial airports, including any possible simplification or other helpful modification of the electronic filing template (see *supra* Appendix C).

*F. Federal Rules that Might Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

**STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;  
ET Docket No. 04-35, Report and Order*

The foundation of our homeland security agenda is a reliable telecommunications infrastructure. With support from the Department of Homeland Security, today's *Report and Order* helps to ensure that foundation is properly laid.

With Americans depending on telecommunications for everything from banking to paging, it is imperative that our systems run reliably. Our current outage reporting requirements focus on the wireline network. Although these requirements have been successful in recognizing and correcting certain causes of service disruptions, it would be imprudent to focus solely on wireline networks as our telecommunications infrastructure becomes increasingly diverse. Today's Order adopts a technology neutral metric to be used across all telecommunications networks.

By requiring mandatory outage reports of carriers we are facilitating a prompt discovery of outages and assuring that first responders, government leaders and citizens will be able to quickly regain access to the services they depend on. Today's Order applies a new common metric of "user-minutes" potentially affected by an outage. This new metric will guarantee that all outages are reported and corrected. Additionally, the rules adopted today revise our previous 911/E911 outage reporting criteria further protecting citizens in times of crisis.

Simplifying the time calculation for filing reports and providing an electronic template will help reduce the burden on carriers who must file a report. The streamlining of the reporting requirements strikes a balance between the Commission's need to be appraised of outages, while at the same time minimizing burden on the industry. The Order also recognizes that much of the information provided in these reports will contain sensitive homeland security information. In order to prevent this information from falling into hostile hands, the Commission has created appropriate protections for this data.

Today's *Report and Order* is yet another step the Commission is taking to ensure the safety of America's telecommunications networks. In a world becoming increasingly dependent on rapid communication via wireless, cable and satellite we adopt these rules to make certain that disruptions to these networks are minimal and rapidly corrected.

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;  
ET Docket No. 04-35, Report and Order*

There is no issue facing the FCC that is more important than homeland security. The Commission is fully committed to working with the Department of Homeland Security to take whatever steps are necessary to help safeguard critical telecommunications infrastructure and ensure that the American people can communicate with one another, even in times of an emergency.

As American consumers rely on an increasingly broad array of technologies and services, the FCC must continue to promote the reliability of these services. With this order, we expand our current mandatory reporting requirements to include all technologies that use the Public Switch Telephone Network. The information we collect in these reports will provide us with critical data that will further our efforts to formulate best practices to guard against future network outages. In addition, the information will be shared with the Department of Homeland Security, thus enhancing our ability to protect our homes and businesses.

A central issue in this proceeding is whether the outage reporting requirements we are adopting should be mandatory. Given the increasing importance of communications capabilities during times of emergencies, I believe that the reporting requirement should be mandatory. At the same time, I understand and share the concerns raised in this proceeding about the need to ensure that the data contained in these outage reports remains confidential. By presumptively affording filed data confidentiality under Exception 4 of the Freedom of Information Act, we are protecting the data while also meeting our data collection needs.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;  
ET Docket No. 04-35, Report and Order*

This goes back to my comments earlier today. Mandatory reporting rules may not be our first choice in this area, but sometimes they are necessary. And when they are necessary, we should step up to the plate and just do them. Our experience in this particular area has been that voluntary mechanisms have not given us the information that we need to do our job on homeland security. That realization brings us to this decision, which I approve. Thanks to OET for bringing this item to us.

**STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;  
ET Docket No. 04-35, Report and Order*

One of this Commission's most important responsibilities is to seek to "make available, so far as possible" a nationwide and worldwide wire and radio communication service "for the purpose of the national defense" and "for the purpose of promoting safety of life and property." 47 U.S.C. § 151. In order to fulfill that responsibility, the Commission in 1992 established network outage reporting requirements for telephone companies and cable companies providing common carrier services. The information gathered through this reporting has led to the development of best practices to reduce the severity and number of telecommunications outages and has enabled the Commission to determine whether and how network reliability is improving.

However, the world has changed a great deal since the early 1990s. Since then, wireless and satellite communications – which have not been covered by our reporting requirements – have become ubiquitous. Moreover, these communications are now the first choice of many (including Government and public safety officials) for use in emergencies. It is thus crucial that we ensure the reliability of these communications. And, as the Commission found with respect to wireline communications, an important part of ensuring reliability is obtaining network outage information.

The most difficult question for me in this proceeding concerned how the Commission should obtain this information. In particular, I am sympathetic to the call from many in industry to rely on voluntary submissions. I have been impressed with the development of the Industry Led Outage Reporting Initiative ("ILORI"), which seeks to accomplish our goals through voluntary reporting. While the Initiative is not yet a perfect solution, it is certainly a good start, and I generally encourage these kinds of industry led solutions.

In addition, a voluntary reporting scheme could provide greater protection for the information we obtain, as the Critical Infrastructure Information Act of 2002 protects only information voluntarily submitted to the Department of Homeland Security (DHS). There is no question that America's communications network is an essential component of the country's critical infrastructure and that sensitive information about the network must be kept out of the hands of bad actors. Thus, in this proceeding, DHS "urge[d] the Commission to make safeguarding the sensitive information that will be contained in the outage reports a highest priority."

On the other hand, DHS made clear that obtaining outage information is of paramount importance – that such information is "critical to national and homeland security functions central to DHS' mission including planning, incident prevention, impact analysis and mitigation, and improving incident response and recovery." Moreover, there have been problems with voluntary outage reporting in the past. At the same time, the Commission has taken steps to ensure the confidentiality of the information we collect, and I am advised that the Freedom of Information Act should provide ample legal protection. Accordingly, I support this item.



**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: New Part 4 of the Commission's Rules Concerning Disruptions to Communications;  
ET Docket No. 04-35, Report and Order*

Events over the past several years dictate that this Commission must have access to the most accurate and immediate information possible when there are significant disruptions to our nation's communications systems, on any platform. I support today's item because it improves the Commission's efforts to play a role, to the degree we can, in responding to emergency situations.

I recognize the reporting requirements we adopt today are not embraced by everyone in the communications industry. But I urge everyone involved to rise to the challenge in helping us do our job. It is well worth repeating that the Federal Communications Commission was created "for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication ..."<sup>465</sup>

Finally, I am pleased that we have made an effort to accommodate a number of industry suggestions with the reporting process when such changes did not inappropriately undercut our underlying objective of data collection. We could not make all of the requested changes, but in many circumstances, I think we found the right balance in addressing a concern while still enabling us to get access to the depth and breadth of information we really need.

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<sup>465</sup> Section 1 of the Communications Act of 1934, as amended, 47 USC § 151.